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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1961

No. 26

JOHN BURRELL GARNER, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

No. 27

MARY BRISCOE, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

No. 28

JANNETTE HOSTON, ET AL., PETITIONERS

v.

STATE OF LOUISIANA, RESPONDENT

On Writs of Certiorari to the Supreme Court of Louisiana

**Supplemental Brief on Behalf of Respondent  
State of Louisiana**

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**THE ACTION OF THESE DEFENDANTS CONSTITUTED  
AN ILLEGAL SEIZURE OF THE PROPERTY OF  
ANOTHER WHICH THIS COURT HAS LONG HELD  
UNLAWFUL**

The action of these defendants in occupying a portion of the premises of the owner and refusing to give up possession is comparable to the action of employees in the "sit-down strikes" of the late 1930's which "sit-down strikes" this Court immediately held unlawful. *The Oakmar*, 20 F. Supp. 650 (1937); *Na-*

*tional Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U.S. 240, 59 S. Ct. 490; *Korthinos et al. v. Niarchos, et al.*, 175 F. 2d 730, reh. den. 175 F. 2d 734, cert. den. 70 S. Ct. 241, 338 P. U. S. 894.

In those cases, and related cases, the employees, contending they were entitled to better wages, etc., refused to leave the premises, or "sat-down" on the job in a strike. In other words, they "sat down" on the owner's property while these defendants "sat-in" the owner's property. The purpose is the same; that is, to coerce the lawful owner of the property, by refusing to give up possession of his property, into doing what the "sit-downers" or "sit-inners" wanted him to do.

With respect to the legality of such action, the Fourth Circuit of Appeals said in the *Korthinos* case at page 732:

"[1, 2] Little need be said as to the possessory libels, since as to them the cases have become entirely moot. Since the right to issue, these libels has been discussed at great length, however, we think we should say that we entertain no doubt as to the power of a court of admiralty to direct that persons engaging in a sit down strike on a vessel be removed therefrom by the Marshal of the District, to the end that the owners may have the lawful possession and use of their property. See *Ward v. Peck*, 18 How. 267, 15 L.Ed. 383; *The Tilton*, 5 Mason 465, Fed.Cas.No. 14,054, opinion by Mr. Justice Storey; *The Navemar*, 303 U.S. 68, 58 S.Ct. 432, 82 L.Ed. 667.

\* \* \* \* \*

*The right to strike does not carry with it the right to deprive another person of the possession of his*

*property. See The Oakmar, D. C., 20 F.Supp. 650; The Losmar, D. C., 20 F. Supp. 650; 887, . . .*" (emphasis added)

\* \* \* \* \*

Furthermore, the reasoning of the Federal District Court in the *Oakmar* case, the landmark decision in this field, is particularly applicable to the instant cases and we would quote therefrom at some length as follows:

"Everything disclosed at this hearing proves conclusively that these so-called strikers do not have the slightest legal right to do what they are doing. They are, by their own statements, by their own admissions, trespassers of a most willful sort,—members of a union whose directions have apparently been blindly followed. The vessel's owner owes them nothing that has not been fully paid or tendered. Their contracts of employment have otherwise been fully performed on the part of the vessel's owner, and are at an end. What, then is it that these men want to accomplish? To compel the vessel's owner to pay them and other members of the union higher future wages, and to do other things on their behalf which they claim they are entitled to, and which will redound to their benefit during any future employment.

[3-5] How do they seek to do this? By taking possession of the vessel and saying to her owner, "We won't let you use her unless and until you meet our demands." *In short, instead of resorting to legal methods in an effort to obtain what they claim they are entitled to, they seek to take away the property rights of the vessel's owner, and by so doing to coerce, yes, in effect, to club such owner into submission.* \* \* \*

\* \* \* \* \*

\* \* \* But these men say in the present case, in effect, that "our status of having been employees upon the property of another puts us in a preferred class, entitles us to an interest in such property, which we can appropriate, or at least hold as security, as it were, for the more complete guarantee, or the fruition, of those rights which are fundamentally ours under the law." But the mere statement of such a theory is its own and best refutation. *It is but another and less shocking way of saying, "If the law does not give us what we want, we will make the law over."* Such theories are the handmaid of crime and anarchy. *They emanate from those persons who lack that self-control which enables men to abide the slower processes of orderly government instead of yielding to that impatience which, if not restrained, will ultimately destroy the fundamental rules for human freedom upon which our form of government is based.* The law is of course, progressive. It must be, because the law represents rules of human conduct—of life, and life is progress. The child progresses, grows into manhood or womanhood, but not into an animal, with attributes of the beast, displacing human ones. Similarly, our law must always keep inviolate certain basic rights inherent in any free people, and one of these rights is the right to use one's property without molestation from mere trespassers. Such right will be protected by this court as long as it sits, without fear or favor. \* \* \* (Emphasis added)

And it would appear that the employees in the "sit-down strike" cases had a closer relationship with the owner, and because of it an even greater right to do what they did, than these defendants have to the owner of the property which they invaded.

We respectfully submit that the reasoning of the Court in the "sit-down" strike cases, and particularly

as stated by Judge Coleman in the *Oakmar* case, is exactly applicable to the present cases.

#### **CONCLUSION**

We respectfully submit that the convictions should be affirmed.

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#### **PROOF OF SERVICE**

I, John F. Ward, Jr., one of the Attorneys for the State of Louisiana, respondent herein, and a member of this bar, certify that on the 19th day of October, 1961, I served copies of the foregoing Supplemental Brief of the State of Louisiana on Counsel of Record for Petitioners, Jack Greenberg of 10 Columbus Circle, New York 19, New York; and the Solicitor General, Department of Justice, Washington 25, D. C., by personally delivering same to them.

**JOHN F. WARD, JR.**

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